



**DEPARTMENT OF THE ARMY**  
**WILMINGTON DISTRICT, CORPS OF ENGINEERS**  
69 Darlington Avenue  
Wilmington, North Carolina 28403-1343

IN REPLY REFER TO

November 21, 2014

Office of Counsel

SUBJECT: Freedom of Information Act Request SAW 15-08

Regional Freedom of Information Officer  
U.S. EPA, Region 4  
AFC Bldg, 61 Forsyth Street., S.W., 9th Floor (4PM/IF)  
Atlanta, GA 30303-8960

Dear Sir or Madame:

The Wilmington District, U.S. Army Corps of Engineers (USACE) received a Freedom of Information Act (FOIA) request from Southern Environmental Law Center (copy enclosed) seeking all records in the possession of the Wilmington District with respect to Spring Creek Farms, LLC's development of the Atlas Tract in Pamlico County, North Carolina. This matter, which concerns a potential existing violation, was referred to Ms. Molly Davis, Chief, Wetlands Enforcement Section, Water Protection Division, Clean Water Enforcement Branch, USEPA by letter dated April 15, 2014. The referral occurred after consultation with Mr. Mike Wylie, National Wetlands Enforcement Expert, Wetlands Enforcement Section.

In response to a prior FOIA request (SAW 14-07), and in an interim response to this recent request, some records from the Wilmington District regulatory file have been provided to the requestor and/or his client, North Carolina Coastal Federation. Most of the remaining responsive documents are inter- or intra- agency emails, many of which are partially or entirely exempt from release under Exemption 5 of the FOIA. Some of the responsive documents were generated by US EPA; those records are enclosed for your review and releasability determination. For your convenience, only the email that requires your review has been provided; however, since it is likely a part of multiple threads, the full document (clean copy) is enclosed, printed on yellow paper for easy identification. If USACE did not disclose any part of the thread, it is noted on the yellow copy.

Please note, the April 15, 2014 referral letter from USACE to EPA, with its attachment, has been withheld in its entirety under Exemption 7(a). Please respond directly to the requestor with regard to the release of the EPA generated information. This office would appreciate receiving a copy of your response to complete our file. If you have any questions, please feel free to contact the undersigned at 910-251-4978 or via email to [Diedrienne.F.Fauser@usace.army.mil](mailto:Diedrienne.F.Fauser@usace.army.mil).

Sincerely,

Dee Dee Fauser  
Freedom of Information Act Officer

Enclosures

# SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 919-967-1450

601 WEST ROSEMARY STREET, SUITE 220  
CHAPEL HILL, NC 27516-2356

Facsimile 919-929-9421

October 23, 2014

## VIA E-MAIL AND US MAIL

Dee Dee Fauser  
Freedom of Information Act Officer  
U.S. Army Corps of Engineers  
Office of Counsel  
69 Darlington Avenue  
Wilmington, NC 28403  
Diedrienne.F.Fauser@usace.army.mil

**Re: Freedom of Information Act Request: Spring Creek Farms, LLC (Pamlico County, North Carolina)**

Dear Ms. Fauser:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, on behalf of our client, the North Carolina Coastal Federation, the Southern Environmental Law Center ("SELC") respectfully requests all records in the possession of the U.S. Army Corps of Engineers ("Corps") with respect to Spring Creek Farms, LLC's development of the Atlas Tract in Pamlico County, North Carolina. This request specifically excludes records produced in response to the North Carolina Coastal Federation's November 7, 2013 FOIA request.

For the purposes of this request, the term "records" includes all written, printed, recorded or electronic materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, books, papers, maps, photographs, data, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages, and mail in the possession, custody, or control of the Corps.

We request that you waive any search and duplication fees and provide the requested records without charge, or at a reduced charge, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Courts have recognized that Congress intended FOIA's fee waiver provision to be "liberally construed in favor of waivers for noncommercial requesters." McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987).

The disclosure of the requested materials would be in the public interest because it is likely to contribute significantly to public understanding of the Corps's evaluation of activities on the Atlas Tract, and is not in the commercial interest of SELC. SELC is a 501(c)(3) non-profit organization working to protect the natural resources of the Southeast and, in particular, to

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gather, analyze, and disseminate public information about coastal wetland and water quality issues in North Carolina. SELC monitors and participates in Clean Water Act permitting processes in North Carolina, and seeks to inform and educate our members and the public regarding the value of wetlands and the application of the laws protecting them. The North Carolina Coastal Federation is specifically focused on informing coastal residents about environmental issues such as wetland determinations through its public outreach, including through its website and Coastal Review Online.

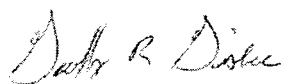
Our intended use of the requested materials is to glean a greater understanding of the Atlas Tract project and to continue to disseminate information about the project to the public through our respective websites and the North Carolina Coastal Federation's Coastal Review Online. All of the activities described above have been, and will continue to be, provided to the public by SELC and our client for no payment.

Should our request for reduced or waived fees be denied, we are prepared to bear the reasonable costs necessary to fulfill this request, although we request that you contact us before processing this request to discuss fees. We reserve our rights to appeal a denial of our request for a fee waiver or reduction.

FOIA directs a responding agency to make a "determination" on any request within twenty working days of receipt. 5 U.S.C. § 552(a)(6)(A). We specifically request that you comply with the statutory deadline. Should our request be denied, we ask that you inform us of the grounds for denial and the specific administrative appeal rights that are available. Id. In the event that any documents or portions of any document are withheld under claim of privilege, we request a privilege log identifying the document and grounds supporting the claim of privilege.

Finally, because the volume of records responsive to our request may be large, we are willing to work with your agency to minimize the work necessary to respond. We are available to review documents prior to any duplication and are willing to discuss other ways to facilitate the production of the requested public records, for instance, by narrowing our request if necessary. Please contact me at 919-967-1450 or [ggisler@selcnc.org](mailto:ggisler@selcnc.org) by November 21, 2014, to arrange for inspection, copying, and electronic transmission of the requested documents.

Sincerely,



Geoffrey R. Gisler

GRG/rgd